THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 276 OF 1998

DATED: 27-06-2007

Between :

N.R.K.Raju

... Petitioner

And

Andhra Pradesh Advocates Welfare
Fund Committee rep. By its Secretary

... Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 276 OF 1998

ORDER :

The petitioner is a practising Advocate at Visakhapatnam. He made an application dated 15-07-1989 under Section 15 of the Andhra Pradesh Advocates' Welfare Fund Act, 1987 (for short "the Act") seeking admission as a member of the A.P. Advocates Welfare Fund constituted under Section 3 of the Act. He also paid a sum of Rs.100/- towards the requisite fee by way of demand draft. Though, according to the petitioner, the said application was received by the respondent-Andhra Pradesh Advocates Welfare Fund Committee on 19-07-1989 his name did not appear in the list of applicants of Visakhapatnam Bar Association. Hence, he addressed a letter dated 02-05-1990 to the respondent. By letter dated, 07-05-1990, he was informed by the respondent that by mistake, his name was shown in the list as S.Rama Chander and that the same was

rectified in their record. However, subsequently, by letter dated 09-03-1993 a sum of Rs.300/- by way of crossed cheque was refunded to the petitioner on the following grounds:

1. You did not send the photographs of the nominees
2. You did not send the form Nos.3 & 4
3. Your name was removed from the membership of the Fund.

Immediately, the petitioner complied with the said objections and resubmitted the application. However, by letter dated
06-05-1993, the respondent informed the petitioner that his application on resubmission was received in the office of the respondent on 10-04-1993 and since by that date he had completed 65 years, it was resolved in the meeting held on
24-04-1993 that the petitioner was not eligible to enrol as a member of the Fund. While communicating a copy of the resolution, the petitioner's application along with the cheque for a sum of Rs.300/- was returned. The petitioner raised an objection to the decision taken by the respondent on the ground that his application was originally received on 19-07-1989 by which time he was only aged 61 years and was eligible to become a member of the Fund. However, the respondent failed to respond. Aggrieved by the inaction of the respondent in considering his objection petition dated 20-05-1993 the petitioner filed this writ petition seeking a declaration that the resolution of the respondent-Committee in its meeting dated
24-04-1993 rejecting the application of the petitioner is arbitrary and illegal.

A counter-affidavit has been filed by the respondent, in which the fact that the application originally sent by the petitioner was received on 19-07-1989 has not been disputed. However, it is stated that whereas under Section 15 of the Act, apart from the admission fee of Rs.100/- the petitioner was also required to pay another sum of Rs.100/- towards annual subscription, he failed to comply with the same. Though subsequently the said amount was remitted, the petitioner failed to submit a letter from the Bar Association certifying his membership. So, another letter dated 08-03-1991 was addressed to the petitioner requesting to send the certificate from the Bar Association. The petitioner failed to respond in spite of reminder dated 08-09-1992. However, he had remitted the annual subscription of Rs.100/- for the year 1991. Since the petitioner failed to comply with the other requirements including the certificate from the concerned Bar Association, the date of birth certificate and photographs of the nominees, the respondent was constrained to return the application of the petitioner along with the admission fee and subscription paid by the petitioner. After a long time the objections were complied and the application was resubmitted by the petitioner on 10-04-1993, by which date the petitioner had crossed the age of 65 years. Hence, it was rightly resolved by the committee in its meeting held on
24-04-1993 that the petitioner was not eligible to join as a member of the Fund.

I have heard the learned counsel for both the parties and perused the material on record.

It is contended by the petitioner that he did not receive the letters dated 08-03-1991 and 08-09-1992 said to have been addressed by the respondent calling upon him to submit the certificate from the Bar Association. He came to know about the deficiencies only on receipt of the letter dated 09-03-1993 and the same were complied with immediately.

Learned counsel for the petitioner vehemently contended that since the application initially submitted by

the petitioner for admission as member of the Fund was admittedly received by the respondent on 19-07-1989, even assuming that by the date of receipt of the required certificates, the petitioner had completed the age of 65 years, the respondent ought not to have rejected the admission of the petitioner as a member of the Fund. It is also contended that since the Act is a beneficial legislation, the respondent is not justified in denying the membership to the petitioner on technical grounds.

Pursuant to the order of this Court, the learned counsel appearing for the respondent has produced the relevant record which shows that the letters dated 08-03-1991, 08-09-1992 and 09-03-1993 were sent to the petitioner by certificate of posting. Therefore, I do not find any justifiable reason to disbelieve the version of the respondent.

So far as the contention of the petitioner on merits is concerned, though the petitioner initially submitted the application within the time, admittedly the certificate by the Bar Association was not enclosed apart from certain other documents such as the photographs of the nominees, the date of birth certificate and etc.

It is true that under sub-section (1) of Section 15 of the Act, only those advocates below the age of 65 years are eligible to apply to the Committee for admission as a member of the Fund. Sub-section (2) of Section 15 of the Act empowers the committee either to admit the applicant to the Fund or to reject the application for reasons to be recorded in writing. However, as per the proviso, no order of rejection shall be passed unless the applicant is given an opportunity of being heard.

The specific case of the petitioner that he was not granted such opportunity before passing the impugned resolution has not been denied by the respondent in its counter affidavit and no other material has been placed before this Court to show that the requirement of giving opportunity under the proviso to sub-section (2) of Section 15 of the Act has been complied with.

In the circumstances, the decision taken by the respondent in its meeting held on 24-04-1993 was not only in contravention of the statutory requirement but also in violation of the principles of natural justice. Hence, on that ground alone the same is liable to be set aside.

Accordingly, the impugned resolution is hereby set aside and the writ petition is disposed of with a direction to the respondent to pass appropriate orders afresh after affording an opportunity to the petitioner as provided under Sub-Section (2) of Section 15 of the Act. This exercise shall be completed as expeditiously as possible preferably within a period of 8 weeks from the date of receipt of a copy of this order. No costs.

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G. ROHINI, J

Date 27-06-2007
KLP